

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
MARVEL WORLDWIDE, INC., :
MARVEL CHARACTERS, INC. and :
MVL RIGHTS, LLC, :
:
Plaintiffs, :
:
- against- :
:
LISA R. KIRBY, BARBARA J. KIRBY, :
NEAL L. KIRBY and SUSAN N. KIRBY, :
:
Defendants. :

Civil Action No. 10 Civ. 141 (CM) (KNF)

-----X
:
LISA R. KIRBY, BARBARA J. KIRBY, :
NEAL L. KIRBY and SUSAN N. KIRBY, :
:
Counterclaimants, :
:
- against- :
:
MARVEL ENTERTAINMENT, INC., :
MARVEL WORLDWIDE, INC., :
MARVEL CHARACTERS, INC., :
MVL RIGHTS, LLC, :
THE WALT DISNEY COMPANY, :
and DOES 1 through 10, :
:
Counterclaim-Defendants. :

**DECLARATION OF RANDI W. SINGER IN SUPPORT OF PLAINTIFFS' AND
COUNTERCLAIM-DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, Randi W. Singer, declare under penalty of perjury as follows:

1. I am a partner of Weil, Gotshal & Manges LLP and am duly admitted to practice in the State of New York and before this Court. Together with the law firms Paul, Hastings, Janofsky & Walker LLP and Haynes and Boone, LLP, I am counsel to Plaintiffs and

Counterclaim-Defendants Marvel Worldwide, Inc., Marvel Characters, Inc., MVL Rights, LLC, Marvel Entertainment, LLC (sued herein as Marvel Entertainment, Inc.) (collectively as “Marvel”) and The Walt Disney Company in this action.

2. Annexed hereto as Exhibit 1 is a true and correct copy of excerpts from the Deposition of Stan Lee conducted on May 13, 2010 and December 8, 2010 that are cited in the accompanying Memorandum of Law in Support of Plaintiffs’ and Counterclaim-Defendants’ Motion for Summary Judgment and Local Rule 56.1 Statement.

3. Annexed hereto as Exhibit 2 is a true and correct copy of excerpts from the Deposition of John V. Romita conducted on October 21, 2010 that are cited in the accompanying Memorandum of Law in Support of Plaintiffs’ and Counterclaim-Defendants’ Motion for Summary Judgment and Local Rule 56.1 Statement.

4. Annexed hereto as Exhibit 3 is a true and correct copy of excerpts from the Deposition of Roy Thomas conducted on October 26 and 27, 2010 that are cited in the accompanying Memorandum of Law in Support of Plaintiffs’ and Counterclaim-Defendants’ Motion for Summary Judgment and Local Rule 56.1 Statement.

5. Annexed hereto as Exhibit 4 is a true and correct copy of excerpts from the Deposition of Lawrence Lieber conducted on January 7, 2011 that are cited in the accompanying Memorandum of Law in Support of Plaintiffs’ and Counterclaim-Defendants’ Motion for Summary Judgment and Local Rule 56.1 Statement.

6. Annexed hereto as Exhibit 5 is a true and correct copy of excerpts from the Deposition of Neal Kirby conducted on June 30, 2010 that are cited in the accompanying Memorandum of Law in Support of Plaintiffs’ and Counterclaim-Defendants’ Motion for Summary Judgment and Local Rule 56.1 Statement.

7. Annexed hereto as Exhibit 6 is a true and correct copy of excerpts from the Deposition of Lisa Kirby conducted on July 1, 2010 that are cited in the accompanying Memorandum of Law in Support of Plaintiffs' and Counterclaim-Defendants' Motion for Summary Judgment and Local Rule 56.1 Statement.

8. Annexed hereto as Exhibit 7 is a true and correct copy of excerpts from the Deposition of Susan Kirby conducted on October 25, 2010 that are cited in the accompanying Memorandum of Law in Support of Plaintiffs' and Counterclaim-Defendants' Motion for Summary Judgment and Local Rule 56.1 Statement.

9. Annexed hereto as Exhibit 8 is a true and correct copy of excerpts from the Deposition of Mark Evanier conducted on November 9, 2010 that are cited in the accompanying Memorandum of Law in Support of Plaintiffs' and Counterclaim-Defendants' Motion for Summary Judgment and Local Rule 56.1 Statement.

10. Annexed hereto as Exhibit 9 is a true and correct copy of excerpts from the Deposition of Mark Evanier conducted on December 6, 2010 that are cited in the accompanying Memorandum of Law in Support of Plaintiffs' and Counterclaim-Defendants' Motion for Summary Judgment and Local Rule 56.1 Statement.

11. Annexed hereto as Exhibit 10 is a true and correct copy of excerpts from the Expert Deposition of John Morrow conducted on January 10, 2011 that are cited in the accompanying Memorandum of Law in Support of Plaintiffs' and Counterclaim-Defendants' Motion for Summary Judgment and Local Rule 56.1 Statement.

12. Annexed hereto as Exhibit 11 is a true and correct copy of a disc containing audio and video clips of interview with Stan Lee, which was marked as Exhibit #9 at the Deposition of Stan Lee conducted on May 13, 2010.

13. Annexed hereto as Exhibit 12 is a true and correct copy of Defendants' Answer and Counterclaims dated April 28, 2010.

14. Annexed hereto as Exhibit 13 is a true and correct copy of the Complaint initiating this action dated January 8, 2010.

15. Annexed hereto as Exhibit 14 is a true and correct copy of the document produced by Lisa R. Kirby, Barbara J. Kirby, Neal L. Kirby and Susan N. Kirby ("Defendants") as part of discovery in this proceeding and identified by the bates number K001616 containing the Certificate of Death of Rosalind Kirby issued on December 30, 1997.

16. Annexed hereto as Exhibit 15 is a true and correct copy of a press release issued by The Walt Disney Company on August 31, 2009 entitled "Disney to Acquire Marvel Entertainment."

17. Annexed hereto as Exhibit 16 is a true and correct copy of the forty-five (45) termination notices served by Defendants in September 2009 on Marvel, Disney and various other entities.

18. Annexed hereto as Exhibit 17 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0014572-576 containing an agreement between Jack Kirby and Magazine Management Co., Inc., executed by Kirby on May 30, 1972.

19. Annexed hereto as Exhibit 18 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0017520-535 containing a transcript of Leonard Pitts's 1981 interview with Stan Lee printed in *Stan Lee Conversations* (Jeff McLaughlin, ed., University of Mississippi Press, 2007).

20. Annexed hereto as Exhibit 19 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0014175-178 containing an Employment Agreement between Stan Lee and Cadence Industries Corporation dated January 19, 1972.

21. Annexed hereto as Exhibit 20 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0014877-879 containing an Employment Agreement between Stan Lee and Cadence Industries Corporation dated April 9, 1976.

22. Annexed hereto as Exhibit 21 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0014762-770 containing an Employment Agreement between Stan Lee and Cadence Industries Corporation dated April 1, 1980.

23. Annexed hereto as Exhibit 22 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0014778-779 containing an Employment Agreement between Stan Lee and Marvel Entertainment Group, Inc. dated March 28, 1988.

24. Annexed hereto as Exhibit 23 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0014797-799 containing an Employment Agreement between Stan Lee and Marvel Entertainment Group, Inc. dated December 22, 1989.

25. Annexed hereto as Exhibit 24 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers

MARVEL0014800-802 containing an Employment Agreement between Stan Lee and Marvel Entertainment Group, Inc. dated April 1, 1994.

26. Annexed hereto as Exhibit 25 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0014820-832 containing an Employment Agreement between Stan Lee and Marvel Enterprises, Inc. dated November 1, 1998.

27. Annexed hereto as Exhibit 26 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0017333-362 containing a transcript of an August 6, 2007 interview with Lawrence Lieber conducted by Daniel Best.

28. Annexed hereto as Exhibit 27 is a true and correct copy of the document produced by Roy Thomas as part of discovery in this proceeding and identified by the bates numbers THOM002629-630 containing a letter from Stan Lee to Jerry Bails dated January 9, 1963.

29. Annexed hereto as Exhibit 28 is a true and correct copy of an excerpt from the document *Kirby: King of Comics* by Mark Evanier (Abrams, 2008), produced by Defendants as part of discovery in this proceeding and identified by the bates numbers K00143–K00377.

30. Annexed hereto as Exhibit 29 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0018162-175 containing an interview with Lawrence Lieber conducted by Roy Thomas entitled “Stan Made Up the Plot . . . And I’d Write the Script . . .” published in *The Alter Ego Collection*, Vol. 1 (ed. Roy Thomas, TwoMorrows Publishing, 2006).

31. Annexed hereto as Exhibit 30 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers

MARVEL0014587-588 containing a two-page synopsis of the plot for the first issue of *The Fantastic Four*.

32. Annexed hereto as Exhibit 31 is a true and correct copy of an interview with Stan Lee conducted by Dan Hagen entitled "Publisher: Stan Lee" published in *David Anthony Kraft's Comics Interview* #85 (1990) and marked as Exhibit #44 at the Deposition of Stan Lee conducted on December 8, 2010.

33. Annexed hereto as Exhibit 32 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0017512-519 containing a transcription of audiotaped recorded responses to written interview questions by Éric Leguèbe recorded in 1978, printed in *Stan Lee Conversations* (Jeff McLaughlin, ed., University of Mississippi Press, 2007).

34. Annexed hereto as Exhibit 33 are true and correct copies of the documents produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0017682, MARVEL0017689-695, MARVEL0017744-751, MARVEL0017799-807, and MARVEL0017842-849 containing excerpts from *Origins of Marvel Comics* by Stan Lee (Simon and Schuster, 1974).

35. Annexed hereto as Exhibit 34 is a true and correct copy of the Affidavit of Stan Lee dated June 11, 2007 and marked as Exhibit #1 at the Deposition of Stan Lee conducted on May 13, 2010.

36. Annexed hereto as Exhibit 35 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0005214-215 containing an agreement between Stan Lee and Marvel Entertainment, Inc. dated March 7, 2006.

37. Annexed hereto as Exhibit 36 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates number MARVEL0008187 containing a Work for Hire Agreement between John V. Romita and Marvel Comics Group dated May 19, 1978.

38. Annexed hereto as Exhibit 37 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates number MARVEL0008220 containing a Work for Hire Agreement between Roy Thomas and Marvel Comics Group dated June 1, 1978.

39. Annexed hereto as Exhibit 38 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0013504-505 containing a letter from Gene Colan to Marvel Comics Enterprises dated April 28, 2008.

40. Annexed hereto as Exhibit 39 is a true and correct copy of an excerpt from the document *The Art of Jack Kirby* by Ray Wyman, Jr. (The Blue Rose Press, 1992) produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0018249-473.

41. Annexed hereto as Exhibit 40 is a true and correct copy of an article entitled "Super-Heroes with Super Problems" by Nat Freedland, which was published in The New York Herald Tribune, Sunday Magazine Section on January 9, 1966 and marked as Exhibit #3 at the Deposition of Stan Lee conducted on May 13, 2010.

42. Annexed hereto as Exhibit 41 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0017206-236 containing an interview with Jack Kirby conducted by Gary Groth,

originally published in *The Comics Journal* #134 (February 1990) and reprinted in *The Comics Journal Library: Jack Kirby* (ed. George Milo, Fantagraphics Books, 2002).

43. Annexed hereto as Exhibit 42 is a true and correct copy of an excerpt from the document *Jack Kirby Collector Fifty-Four* (ed. John Morrow, TwoMorrows Publishing, 2010) produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0017916-999130.

44. Annexed hereto as Exhibit 43 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0017190-200 containing an interview with Kirby conducted by Mark Herbert, originally published in *The Nostalgia Journal* issues #30 and #31 (November and December 1976) and reprinted in *The Comics Journal Library: Jack Kirby* (ed. George Milo, Fantagraphics Books, 2002).

45. Annexed hereto as Exhibit 44 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0000350-360 containing an affidavit of Jack Kirby executed on July 12, 1966.

46. Annexed hereto as Exhibit 45 is true and correct copy of a compilation document marked as Exhibit #11 at the Deposition of Neal Kirby conducted on June 30, 2010 which contains Applications for Registration of a Claim to Renewal Copyright signed by Jack Kirby and filed by Marvel Comics Group in the Copyright Office on December 16, 1968, December 19, 1968, February 26, 1969, April 4, 1969, April 24, 1969, May 12, 1969, July 14, 1969, and September 11, 1969.

47. Annexed hereto as Exhibit 46 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers

MARVEL0014564-571 containing a Writers and Artists Agreement between Jack Kirby and Marvel Comics Group dated March 24, 1975.

48. Annexed hereto as Exhibit 47 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0014558-559 containing an Acknowledgment of Copyright Ownership signed by Jack Kirby and notarized on June 16, 1986.

49. Annexed hereto as Exhibit 48 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL13634-644 containing the Artwork Release between Jack Kirby and Marvel Comics Group dated June 16, 1987.

50. Annexed hereto as Exhibit 49 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0014560-561 containing a letter from Joseph Calamari to Jack Kirby, endorsed by Jack Kirby, dated May 12, 1987.

51. Annexed hereto as Exhibit 50 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0013819-820 containing an article from *Comic Buyer's Guide* published on October 3, 1986 entitled "Response: Jack Kirby replies to Marvel Statement."

52. Annexed hereto as Exhibit 51 is a true and correct copy of the document produced by Mark Evanier as part of discovery in this proceeding and identified by the bates numbers ME0170-172 containing a letter from Stephen F. Rohde to Joseph Calamari dated November 19, 1997.

53. Annexed hereto as Exhibit 52 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0017489-504 containing an interview with Stan Lee conducted by David Anthony Kraft and originally published in *Foom*, Vol. 1, No. 17 (March 1977) reprinted in *Stan Lee Conversations* (Jeff McLaughlin, ed., University of Mississippi Press, 2007).

54. Annexed hereto as Exhibit 53 is a true and correct copy of an interview of Stan Lee conducted by Clifford Meth and Daniel Dickholtz entitled "Stan Lee: It's a Marvelous Life:" published in *Comics Scene Special* (1987) and marked as Exhibit #39 at the Deposition of Stan Lee conducted on December 8, 2010.

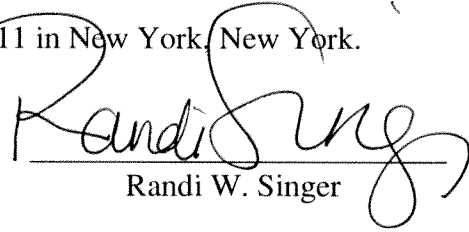
55. Annexed hereto as Exhibit 54 is a true and correct copy of the Stipulation Regarding Defendant Barbara J. Kirby dated December 22, 2010.

56. Annexed hereto as Exhibit 55 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0017406-407 containing the article "Who Created Spider-Man? [Kirby Lawsuit]" by Al Nickerson published by Newstex on September 22, 2009.

57. Annexed hereto as Exhibit 56 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0017064-067 containing an excerpt from page 4 of "The JACK F.A.Q." section of <http://www.povonline.com/jackfaq/JackFaql.htm>.

58. Annexed hereto as Exhibit 57 is a true and correct copy of the document produced by Marvel as part of discovery in this proceeding and identified by the bates numbers MARVEL0017055-059 containing an excerpt from page 2 of "The JACK F.A.Q." section of <http://www.povonline.com/jackfaq/JackFaql.htm>.

I declare under penalty of perjury that the foregoing facts are true and correct. This declaration was executed on the 18th day of February, 2011 in New York, New York.



Randi W. Singer